IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

MFA.No. 191 of 2006()

WC.No.156/2003 of COMMISSIONER FOR WORKMEN'S COMPENSATION (DEPUTY LABOUR COMMISSIONER) KOZHIKODE
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APPELLANT: IST OPPOSITE PARTY

P.ABDUL MAJEED, S/O.USMANKUTTY,
THATTATHODY HOUSE, P.O.PARAPPANANGADI,
MALAPPURAM DISTRICT.

BY ADV. SRI.P.K.SURESH KUMAR
SRI.K.P.SUDHEER

RESPONDENTS: APPLICANT & 2ND OPPOSITE PARTY
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1. MOIDEEN KOYA, S/O.MUHAMMED,
KALATHIL VEEDU, P.O.NALLALAM,
KOZHIKODE DISTRICT.

2. THE NEW INDIA ASSURANCE COMPANY
LIMITED, FEROKE BRANCH, P.O.FEROKE,
KOZHIKODE.

BY ADV. SRI.KKM.SHERIF
SRI.P.M.KUNJIMOIDEENKUTTY
SRI.A.A.ZIYAD RAHMAN
SRI.RAKESH DAWNY KOKKATTU
SRI.JACOB ABRAHAM

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 03/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No.191 of 2006

Dated this the 3rd December, 2007.

J U D G M E N T

The first opposite party in W.C.No.156/2003, on the file of the Commissioner for Workmen's Compensation (Deputy Labour Commissioner), Kozhikode, is the appellant. The first respondent filed the case claiming compensation on the following averments. The first respondent was an employee of the appellant, and he was doing loading and unloading work under him. It was contended that he was travelling in a mini lorry bearing Registration No.KL-10G 3038 from Kondotty to Pantheerankavu. When the vehicle reached Ramanattukara Junction, a collision took place between the mini lorry and a stage carriage bus, bearing Registration No.KL-10C 6246. The first respondent filed the case claiming a compensation of Rs.50,000/= alleging that he sustained employment injuries. The appellant did not appear and contest the matter. The second respondent, Insurer, disputed its liability. The Deputy Labour Commissioner found that the first respondent sustained an employment injury and he was entitled to get compensation from the

appellant. An order was passed directing the appellant to pay an amount of Rs.54,907/= as compensation. Challenging that order, this appeal is filed.

2. The main ground alleged in the appeal memorandum was that the appellant could not contest the matter, as he was suffering from various illnesses. It is submitted that the appellant received notice and he entrusted the matter with an Advocate to file written statement, and the case was posted for filing the written statement from 20.2.2000 onwards. It is also submitted that no written statement could be filed and the claim petition was disposed of on 25.4.2006 without hearing the appellant. According to the appellant, he was suffering from Diabetes mellitus type 2 from 1988 onwards, and he was suffering from pulmonary tuberculosis from 2002. The certificate issued by the Malabar Institute of Medical Sciences shows that he was brought to the hospital on 6.2.2004 for ulcer with gangrene left foot. According to the appellant, he sold the vehicle to one Bava on 25.3.2002, long prior to the date of accident, and he had nothing to do with the vehicle. It was argued that the appellant had given necessary intimation to the transport authority for

making necessary changes in the Registration particulars. It is also argued that Bava, the purchaser of the vehicle, is next door neighbour of the applicant, and a close relative. It is argued that suppressing all those materials facts, the appellant was shown as the owner of the vehicle. Considering the fact that the appellant was suffering from serious illnesses and he could not appear and contest the matter, I am of the view that it is only just and proper that the appellant be given an opportunity to contest the matter on merits. For that purpose, the case has to go back.

In the result, appeal is allowed. The impugned order passed by the Commissioner for Workmen's Compensation (Deputy Labour Commissioner), Kozhikode, in W.C.No.156/2003, is hereby set aside. The case is remanded. The Deputy Labour Commissioner is directed to take W.C.No.156/2003 back to file and dispose of the same, after giving a reasonable opportunity to the appellant to file his objections and also to adduce evidence. It is made clear that no fresh notice will be issued to the parties.

Parties shall appear before the court below on 10.1.2008.

K.PADMANABHAN NAIR,
JUDGE

nj.